

Message Text

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ACTION EUR-12

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SUBJECT: GOVERNMENT PROCUREMENT - EC PREPARATIONS FOR
TECHNICAL BILATERALS WITH US FOLLOWING NTM MEETING

REF (A) EC BRUSSELS 5993, (B) STATE 143097

1. ON JULY 2 WE SPOKE WITH EC COMMISSION OFFICIAL
JEAN-PIERRE DERISBOURG ON THE MEETING HE HAD WITH MEMBER
STATE EXPERTS ON JUNE 18 TO WORK OUT EC POSITIONS FOR
UPCOMING US-EC TECHNICAL BILATERAL ON THE OECD GOVERNMENT
PROCUREMENT CODE. DERISBOURG SAID THAT IT HAD BEEN A
VERY GOOD MEETING AND THE MEMBER STATES WERE MORE FLEXIBLE
THAN HE HAD EXPECTED. HE SAID HE WAS OPTOMISTIC THAT
PROGRESS COULD BE MADE ON THE TRANSPARANCY ISSUE "IF
THERE WAS GOODWILL ON THE PART OF THE US".

2. DERISBOURG SAID THAT THE MEMBER STATES EXPERTS HAD
AGREED THAT ANY LOSING BIDDERS SHOULD BE RECEIVED BY A
GOVERNMENT OFFICIAL (NOT IN ALL CASES THE PURCHASING
AGENCY) AND BE PROVIDED INFORMATION ON WHY HIS BID
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HAD LOST.

3. DERISBOURG SAID THAT THE MEMBER STATE EXPERTS WERE ADAMANT IN NOT HAVING EX-POST PUBLICITY NOR PROVIDING THE LOSING BIDDERS WITH THE EXACT PRICE OF THE WINNING BID. HE DID INDICATE FLEXIBILITY IN PROVIDING POSITIVE REASONS WHY ANOTHER FIRM HAD WON, (QUALITY, PERFORMANCE, DELIVERY TIME, ETC.) AND IN PROVIDING THE NAME OF WINNING FIRMS.

4. DERISBOURG SAID THAT HE WOULD HAVE MUCH MORE DETAILED STATISTICS FOR THE US SIDE THAN PREVIOUSLY. HE SAID THAT THE US HAD BEEN RIGHT IN BEING SKEPTICAL ABOUT THE 9-10 BILLION DOLLAR FIGURE FOR GOVERNMENT PROCUREMENT COVERED BY THE PROPOSED CODE PUT FORWARD IN THE OECD BY THE EC. IT ACTUALLY WOULD BE LESS. THE DIFFERENCE IS BECAUSE TELECOMMUNICATIONS ENTITIES HAD BEEN INCLUDED IN THE EC'S TOTAL AND THE EC DOES NOT INTEND TELECOMMUNICATIONS ENTITIES TO BE COVERED BY THE CODE IN THE FIRST LEVEL OF OBLIGATIONS. HE WAS UNABLE TO GIVE US THE NEW FIGURE.

5. COMMENT: THE EC FLEXIBILITY DERISBOURG DESCRIBED DID NOT SEEM TO GO TOO FAR BEYOND WHAT IS ALREADY PROVIDED FOR IN ARTICLE 33 OF THE DRAFT CODE. HOWEVER, HE RECOGNIZED THE IMPORTANCE OF TRANSPARENCY TO THE US AND EXPRESSED A WILLINGNESS TO NEGOTIATE TOWARD A SYSTEM OF TRANSPARENCY THAT WOULD MEET OUR NEEDS. WITHOUT ENTERING INTO THE DIFFICULT PROBLEM OF PRICE OF THE WINNING BID WHICH WE DISCUSSED IN REFTTEL A, WE MIGHT SUGGEST THE FOLLOWING ON ART. 33. NOT ONLY IS IT IMPORTANT THAT LOSING FIRMS GET APPROPRIATE INFORMATION, BUT THAT THEY GET IT PROMPTLY AND WITH LITTLE EFFORT. IF WE SHOULD DECIDE TO BE MORE FLEXIBLE ON THE ISSUE OF EX-POST PUBLICITY, WE SHOULD AT LEAST STRIVE TO BUILD INTO THE CODE, AND PERHAPS ART. 33, TIME LIMITS ON GOVERNMENTS TO PROVIDE INFORMATION AND A HIGH DEGREE OF SIMPLICITY IN PROCEDURES TO OBTAIN IT. HINTON

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